

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Salinas and King City, CA)

SUN STREET CENTERS, INC.

Employer¹

and

Case 32-RC-5640

TEAMSTERS LOCAL 890,
INTERNATIONAL
BROTHERHOOD OF
TEAMSTERS

Petitioner²

DECISION AND DIRECTION OF ELECTION

The Employer, Sun Street Centers, Inc., is in the business of providing treatment, education and prevention services for drug and alcohol addiction in Monterey County California. The Employer's prevention department is housed in facilities in Salinas and King City, California. The Petitioner, Teamsters Local 890, International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit composed of all full-time and regular prevention department employees employed at the Employer's Salinas and King City, California locations.³ A hearing officer of the Board held a hearing in this matter, and the parties filed post-hearing briefs, which I have duly considered.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The original petition described the petitioned-for unit as "all full time employees of the Prevention Department," excluding only "part-time employees." During the hearing, the Petitioner orally amended the description of the petitioned-for unit to include "all full-time and regular part-time *professional* employees employed by the Employer at its Salinas, California and King City, California facilities" (emphasis added); and to exclude "all managerial employees, all employees currently represented by a labor organization, all

The sole issue before me is whether the Employer's prevention department administrative assistant Flora Garcia should be included in the petitioned-for unit.⁴ The Employer argues that Garcia should be excluded from the unit because she does not share a community of interest with the rest of the prevention department employees. The Petitioner argues, on the other hand, that Garcia shares a sufficient community of interest with the rest of the prevention department employees to be included in the unit. I have considered the evidence and the arguments presented by the parties on this issue, and I have concluded, in agreement with the Petitioner, as set forth below, that Garcia shares a sufficient community of interest with the rest of the prevention department employees to be included in the unit.⁵

OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer, a non-profit corporation, operates several different alcohol and drug addiction-related programs in Monterey County, California, including a men's residential treatment program, an outpatient program for men and women, all driving under the influence (DUI) education classes for Monterey County, a family transitional

part-time, temporary student employees and interns, guards and supervisors as defined in the Act." The inclusion of the word "professional" in the amended unit description appears to have been inadvertent because at no point during the hearing or in its post-hearing brief did the Petitioner contend that any of the employees it was seeking to represent were professional employees within the meaning of Section 2(12) of the Act. To the contrary, the Petitioner argued both at hearing and in its post-hearing brief that no prevention department employees were professional employees under the Act. In these circumstances, I have modified the amended unit description to reflect the evident intention of the Petitioner by removing the word "professional."

⁴ The parties stipulated at the hearing that the scope of any unit found appropriate would include the Employer's prevention department employees employed at both its Salinas and King City, California prevention department locations.

⁵ At the hearing, the Employer took the position that all the prevention department employees except Garcia were professional employees under the Act. However, in its post-hearing brief the Employer did not pursue this argument and relied solely on the contention that Garcia should be excluded because she did not share a sufficient community of interest with the rest of the prevention department employees. Thus, no one is contending at this point that any of the prevention department employees constitute professional employees under the Act. Nevertheless, for the reasons discussed below, I specifically find that none of the prevention department employees are professional employees within the meaning of Section 2(12) of the Act.

program, and a prevention program. The Employer operates four separate facilities in Salinas, as well as a facility in King City, and one in Marina. The Employer's administrative office and its Salinas DUI office are housed in one Salinas facility, and the men's residential program, the outpatient program, and the prevention program are each separately located at the three other Salinas facilities. The Employer's Marina facility houses the family transition office, and the King City facility houses offices of both the prevention department and the DUI program.

The Prevention Department

The prevention department operates from offices in Salinas and King City, California. The Salinas prevention department office is housed in a building about two miles from the Employer's administrative office and about 45 miles from the King City prevention department office. The Salinas office services the areas of Monterey County from Salinas north, including the cities of Monterey, Seaside, Marina, and Castroville. The King City office services the areas of Monterey County south of Salinas, including the cities of Greenfield and Gonzalez. The prevention department currently employs seven non-supervisory employees, including one administrative assistant and six employees classified as program coordinators/outreach specialists.⁶ Four of the coordinators and the administrative assistant are assigned to the Salinas office, and the other two coordinators are assigned to the King City office. All prevention department employees normally report directly to the director of the prevention department, whose office is located at the Salinas prevention department location. The prevention director position has been vacant since January 2, 2009, and the Employer's executive director

⁶ I will refer to all six as "coordinators," because the record does not establish a clear distinction between these titles, and they all share the same job description (Program Coordinator I and II).

has assumed the duties of this position on a temporary basis until the position is filled. Also, in the absence of a prevention director, the Employer's director of south county services, who is located at the King City office, has been temporarily supervising the two coordinators assigned to that office.⁷

The prevention department facility in Salinas contains a lobby area, four offices and a conference room. There is an office for the director, one for the administrative assistant, and two offices that are shared by the four coordinators. The administrative assistant's office is on the right when entering the building, and it has a glass window facing the lobby. There is no receptionist in the lobby, and no staff member is specifically assigned to do receptionist duties. Incoming calls ring at all phones. A bell on the front door alerts the prevention staff to the arrival of a visitor. Each prevention staff employee has a computer and telephone on his or her desk.

The Coordinators

The six coordinators are engaged in various aspects of community outreach around the issue of drug and alcohol addiction prevention. One coordinator in the Salinas office has the primary responsibility of running the Employer's Safe Teens Empowerment Project (STEPS), an after-school youth program. This coordinator sets up projects for local youth and trains them to do peer-to-peer counseling and life skills training with other youth. She also coordinates activities between the youth involved in these programs and the local police and the California Department of Alcohol and

⁷ The director of south county services also supervises the Employer's DUI program for the south county, which is housed in the same building as the prevention department in King City. The parties stipulated and I find that the Employer's executive director, prevention department director and director of south county services are supervisors within the meaning of Section 2(11) of the Act because they have the power, which they have exercised, to hire and fire employees and to assign and responsibly direct employees on behalf of the Employer.

Beverage Control (ABC) involving decoy work and assistance at DUI checkpoints. In addition, she is responsible for updating and presenting a specific drug prevention program.⁸

Another Salinas coordinator is in charge of coordinating the Preventing Alcohol Related Trauma in Salinas (PARTS) coalition. This coalition is made up of representatives of more than a dozen organizations, including the Salinas police department, the Salinas probation department, ABC, and other non-profit organizations, such as Mothers Against Drunk Driving and Parents Creating Solutions. The PARTS coordinator is responsible for coordinating the efforts of the members of the PARTS coalition in order to reach their common goal of preventing alcohol-related trauma in Salinas. The coalition is currently focused on developing and getting enacted a tougher social host ordinance in Salinas. While one coordinator is responsible for running this coalition, the other three Salinas coordinators are required to participate in the monthly coalition meetings. As part of his work with the coalition, the PARTS coordinator is involved in programs in educating the public on the coalitions goals and lobbying members of the Salinas City Council to support the Coalition's goals. The PARTS coordinator also coordinates a drug-free communities grant from the federal government.

The third Salinas coordinator is responsible for running the Employer's responsible beverage service program (RSB) for training bartenders, wait staff, and point-of-contact sales people in the responsible selling of alcoholic beverages. These trainings are held quarterly either at a conference room in the Employer's administration building in Salinas or at the client's place of business. The Employer has presented this program

⁸ At the hearing, a presentation was defined as providing information, while a training was defined as providing teaching tools and skills.

for some time, but the present coordinator is responsible not only for running the program but also for working with ABC to develop the curriculum in order to obtain State certification of the program.

The fourth Salinas coordinator and the two King City coordinators are primarily engaged in putting on life skills training for youth and parents in Monterey County, which training is based on a life skill curriculum developed for the Employer to promote healthy families. There is a separate ten-week, two-hour-a-week course for parents and youth. The life skills training for parents teaches basic parenting skills and practical life skills, while the training for youth teaches them to be better self-advocates and to have better self-esteem. The life skills training is presented in both Spanish and English. The curricula for the life skills training programs appear to be set and it appears from the record that regardless of which coordinator gives the parent or youth training, the content of the training is the same.

In addition to their primary responsibilities, all six of the coordinators are required to participate in the various community or municipality-based coalitions that are involved in alcohol and drug addiction prevention in Monterey County. These coalitions are made up of representatives from numerous organizations, including local, county and state government agencies, local schools, and other non-profit organizations. In the Salinas prevention department, the PARTS coordinator and the other three Salinas coordinators attend the PARTS coalition meetings and give reports on their activities which are related to the goals of that coalition. These meetings are held at a conference room at the Employer's Salinas administrative office. Each of the two King City coordinators is involved in a different municipality-based prevention coalition in the King City area.

In addition to giving presentations and conducting trainings, some of the coordinators are required to regularly update or “revamp” their presentations or trainings. This does not appear to be the case for the three coordinators involved primarily in doing the life skills training, because as noted above, the curriculum for the life skills training appears to be set. As part of their work, the coordinators need to maintain contacts with local, county and state representatives and with representatives of the media. The prevention department has in the past issued press releases, and at least one coordinator, the most senior coordinator in the Salinas office, worked with the former prevention director on some of them.

The coordinators work 40 hour weeks and are required to fill out bi-weekly time sheets, as are all prevention department employees, including the administrative assistant, and those time sheets are delivered to the Employer’s administrative office by the administrative assistant. The executive director estimated that the coordinators spend between 30 and 70 percent of their work time out of the office performing such tasks as giving presentations, conducting trainings, and attending coalition meetings. Thus, they may be required to work flexible schedules. The executive director testified that the newer coordinators, two of whom have been there less than six months and the other less than a year, spend a smaller percentage of their time out of the office because they are still learning their jobs.

Although the Employer’s job description for the coordinator position specifies that the minimum requirements for the position are a Bachelor of Arts degree (BA) or its equivalent plus three years of related experience working with people with alcohol and/or drug addiction, the record establishes that the Employer requires neither a BA or its

equivalent, nor three years of prevention experience. In this regard, only three of the six current coordinators have Bas, and it does not appear from the record that any of the other three have the equivalent of a BA, or that more than one of them had three years of drug and alcohol addiction prevention-related experience at the time they were hired. No license or certification is required for the coordinator position.

Administrative Assistant.

As noted above, Flora Garcia is currently the only prevention department administrative assistant and has held this position since March 2006.⁹ Garcia's principle responsibility is to input data that she collects from the Salinas and King City coordinators pertaining to their presentations and trainings, which data is input into a specialized data base operated by the State of California. Only the prevention department inputs and uses this data base. At the hearing, the Employer's executive director testified that Garcia spent about 50 percent of her time collecting and inputting this data, which she obtains from forms filled out by the coordinators in which they record statistical information about presentations that they have given and training that they have conducted. One of Garcia's responsibilities is to train new coordinators on how to fill out these forms. Up until about a month or two prior to the hearing, Garcia was the only prevention employee trained to do the inputting of this data. However, before the former prevention director left on January 2, 2009, she instructed Garcia to train all of the coordinators in the Salinas office to do the inputting. At the time of the hearing, Garcia had trained one coordinator in data input, and this person helped Garcia do the inputting

⁹ Prior to January 2009, there was another prevention department administrative assistant located in the Employer's King City prevention office, but she was promoted to the coordinator position in January 2009.

in January and February 2009. Garcia is currently scheduled to train another coordinator to help her do this work.

The balance of Garcia's time is devoted to performing other duties in support of the prevention programs. On a daily basis, she provides information and referral assistance to members of the public or representatives of other agencies, who visit or call the Salinas prevention office for information. Garcia shares this duty with the coordinators. Therefore, when a person walks or calls into the office, Garcia or one of the other staff members speaks to the person, assesses the person's needs and then provides the relevant information or referral.¹⁰ The office has a book containing referral information for various agencies and organizations, which is shared by the prevention department staff, and all members of the staff, including Garcia, are responsible for logging-in each walk-in visitor, telephone call for information, and referral.

Garcia also collects the bi-weekly time cards and mileage forms from the Salinas prevention department staff and delivers them to the administrative office. In addition, she is responsible for delivering the mail to the administrative office, although the coordinators will also deliver the mail if they are going to the administrative offices for some other reason. The executive director testified that Garcia was the Salinas office's courier and spent no more than a half an hour to an hour a day doing this work.

Garcia's duties also include providing support to coordinators relating to the various Salinas coalitions, including typing the agendas for coalition meetings, calling the coalition members to remind them when the meetings are to take place, and taking minutes at the coalition meetings that are held in the Salinas area. Recently, one of the

¹⁰ The record evidence did not establish that Garcia is primarily responsible for these duties. In this regard, Garcia and the most senior coordinator in the Salinas office both testified that visitors and telephone calls are handled by whomever is available at the time.

Salinas coordinators was assigned to take the minutes at a coalition meeting, and the two coordinators at the King City office regularly take minutes at the coalition meetings that they attend. The King City coordinators also perform other administrative tasks related to their coalitions, which types of tasks Garcia normally performs for the Salinas-based coordinators.

Although Garcia does not make presentations to groups or give trainings, she is called upon to participate in special projects on behalf of the department which take her out of the office. For example, once a year around Thanksgiving, she, along with all of the other prevention department employees, participates in a coalition event involving a police sobriety check-point, where Garcia has been called upon to display a coalition banner to passing motorists. She has also been required to attend Salinas city council meetings in support of ordinances supported by the prevention department, and on one occasion to support the department's opposition to a large box liquor retailer's application for a liquor license. Although Garcia was not asked to speak at these meetings, she was required to be present on behalf of the Employer. On one occasion during the summer of 2008, Garcia was required along with the rest of the Salinas prevention staff to go door-to-door in the neighborhood surrounding the prevention office to pass out flyers about a particular meeting.

Another of Garcia's responsibilities is to instruct new coordinators in the department's policies and procedures. She also helps the newer coordinators with preparing their presentations and trainings. Among other things, this assistance includes providing the new coordinators with the contact information needed to do the job and information on how the job was done in the past. Such assistance to the new coordinators

is significant given that the Employer does not provide any kind of formal training for the new coordinators. The new coordinators must rely on the other coordinators for assistance as well as Garcia, who has been in the prevention department longer than most of the coordinators. Garcia also provides such administrative support as making copies for the coordinators and compiling documents. Although all of the coordinators and the department director have computers on their desks and do most of their own typing, on occasion, Garcia has done typing for the former director and for the coordinators. In addition, Garcia maintains office equipment, inventories supplies and prepares purchase order for supplies for the prevention department.

Although Garcia has not been trained to give presentations or trainings, she has discussed with the executive director the possibility of being trained to give life skills training in the future. Recently, the executive director offered to allow Garcia to take the ten-week life skills training, which Garcia expressed an intention to take the next time it is offered. If she obtains the necessary skills and experience, she could be promoted to a coordinator position, according to the executive director's testimony. .

Garcia works a 40 hour week, generally, Monday through Friday from 8 a.m. to 5 p.m. She shares the same pay range (\$12.91 to about \$19 per hour) and fringe benefits as the coordinators.

Garcia has minimal contact with employees in other departments. Most of these contacts are related to her occasional delivery of documents to the executive secretary's office or the accounting office. The record indicates that the Employer employs two other administrative assistants; one works for the executive director in the administration office and one works in the family transitional program in Marina. There is no evidence

that Garcia has any contact with either of them. In addition, she does not fill in for either of the other administrative assistants, and neither of them fills in for her.

ANALYSIS

The Coordinators Are Not Professional Employees Under the Act.

Although it appears that the Employer is no longer contending that the coordinators are professional employees, for it has omitted that contention from its brief, I will nonetheless address that issue in light of the employer having made such a contention during the hearing. In considering that issue, I conclude for the following reasons that the coordinators are not professional employees with the meaning of Section 2(12) of the Act.

Section 2(12)(a) defines a professional employee as:

any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

The record evidence does not establish that the work of coordinators meets these criteria for professional employee status. Thus, for example, the record clearly shows that the performance of the coordinators' duties does not require "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized

instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education.” In that regard, although the coordinator job description sets a minimum requirement that a person have a BA or its equivalent, the job description says nothing about an applicant for the position being required to have any type of advanced knowledge or any type of prolonged course of specialized instruction. Thus, the job description does not even specify what area of concentration the BA must be in. Moreover, contrary to the stated requirements in the job description, the record establishes that the Employer does not require that a coordinator have a BA or its equivalent, for only three of the current coordinators have BAs. The record evidence also establishes that the coordinator position, at most, requires the skills of a general academic education, the ability to read, write, perform some basic research and make power point presentations. Therefore, most of the new coordinators learned their jobs by performing their duties with help from more senior coordinators, as well as from Garcia and their supervisors.¹¹ Thus, it is apparent that the coordinator position does not require a “prolonged course of specialized intellectual instruction and study in an institution of higher learning.”

Moreover, the work of the coordinators does not appear to be “predominantly intellectual” and varied in character but, instead, appears to predominantly involve routine mental work. In this regard, three of the coordinators have as their primary responsibility the conducting of life skills trainings, the content of which appears to be

¹¹ In this regard, I note that two of the current coordinators were promoted or transferred into the coordinator position from an administrative assistant position. One of these coordinators was an administrative assistant in the Employer’s marketing department before she was transferred into the coordinator position and apparently did not have any prior alcohol or drug addiction prevention experience. The other was an administrative assistant in the Employer’s King City prevention office and was promoted to the coordinator position in January 2009 by the executive director after a restructuring of the department led to the resignation of the prevention director and two other staff members.

pre-set and not developed or modified by the coordinators. Insofar as three of the coordinators are responsible for updating and/or developing the presentations that they give or trainings that they conduct, this is done through routine research on the internet and through contacting various government agencies. Furthermore, the record establishes that for the most part, the work of the coordinators is of such character that the output produced can be standardized in relation to a given period of time. Thus, the number of presentations given and trainings conducted by each coordinator can be measured by week, month or year.

In Sum, based on the foregoing, I find that the coordinators are not professional employees within the meaning of the Act.

The Administrative Assistant Shares a Sufficient Community of Interest With The Coordinators to Be Included In The Unit

“In determining whether a sufficient community of interest exists, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration.” *TDK Ferrites Corp.*, 342 NLRB No. 81 (2004), citing *Yeungling Brewing Co. of Tampa*, 333 NLRB 892 (2001), and *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), enfd. 66 F.3d 328 (7th Cir. 1995). No single factor has controlling weight and there are no *per se* rules about including or excluding any particular classifications of employees in a unit. *Airco, Inc.*, 273 NLRB 348 (1984). The Board emphasize that each case turns on its own facts and that “the effect of any one factor, and therefore the weight to be given it in making the unit determination, will vary from industry to industry and from plant to plant.” *American Cynamid Co.*, 131 NLRB 909 (1961). In making unit determinations, the

Board's task is not to determine the most appropriate unit but simply to determine an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). Here, for the reasons that follow, I conclude that the balance of factors establishes that the petitioned-for unit of all prevention department employees, including the administrative assistant, is an appropriate unit.

Functional Integration

The degree to which the work of administrative assistant Flora Garcia is functionally integrated into the work of the prevention department weighs heavily in favor of finding that she shares a sufficient community of interest with the coordinators to be included in the petitioned-for unit. Thus, the record establishes that all of Garcia's duties are directly and exclusively related to the functions of the prevention department. In this regard, about 50 percent of her time is spent collecting and inputting data regarding the presentations given and trainings conducted by the prevention department coordinators, which data is maintained in a State of California data base used only by the prevention department. She obtains the data from forms she collects directly from the coordinators, whom Garcia trained in filling out such forms.

The balance of Garcia's time is spent in performing other support functions on behalf of the coordinators. Thus, she performs tasks related to the various coalitions run or participated in by the Salinas coordinators, including calling coalition members to remind them when their scheduled meetings will occur, typing the agendas for the meetings, and taking the minutes at most of these meetings. In addition, she trains the new coordinators in the policies and procedures of the prevention department and upon request gives input to coordinators on their presentations and/or trainings. She also

attends the weekly staff meetings along with the Salinas coordinators. On a daily basis, Garcia and coordinators share in the responsibility of providing information and/or referrals to persons who walk into or call the Salinas office.

Common Supervision

Garcia shares common supervision with the rest of the prevention department employees. Thus, until the prevention department director resigned on January 2, 2009, Garcia and the rest of the prevention department employees were directly supervised by the prevention director. Since January 2, the Salinas coordinators and Garcia have been temporarily supervised by the Employer's executive director, while the King City coordinators have been supervised by the director of south county services. However, the Employer has indicated an intention to hire a new prevention department director.

Wages, Hours and Other Working Conditions

Garcia's wages, hours and working conditions are substantially similar to those of the Salinas coordinators. In this regard, Garcia works in the same location as all of the Salinas coordinators and has daily contact with them. Garcia has the same pay range and the same fringe benefits as the coordinators and receives the identical \$.40/hour bi-lingual bonus as do the bi-lingual coordinators for performing some of her duties in Spanish. Further, Garcia, like the coordinators, works a 40-hour work week and fills out weekly time sheets. To be sure, most of the coordinators work a substantial percentage of their time outside the office making presentations or conducting trainings, and also have flexible work schedules that allow them to attend work-related activities in the evening or on Saturday. However, such differences between Garcia's working conditions and those of the coordinators are outweighed by the similarities in their working

conditions. In this regard, I note in particular that even though the Salinas coordinators spend substantial amounts of their work time out of the office, they also all spend a substantial amount of time each day in the Salinas office during the 8:00 a.m. to 5:00 p.m. time period, where they have daily contact with Garcia. Moreover, as noted, Garcia's duties sometimes require that she join the coordinators in working outside the office.

Interchange

There is some evidence of interchange between the administrative position and the coordinator position. Thus, as noted above, one coordinator regularly helps Garcia in data entry and another is scheduled to be trained to help her. However, the coordinators do not fill in for Garcia when she is absent or on vacation and Garcia does fill in for the coordinators.

Degree of Skill and Common Functions

Garcia shares several skills and functions with the coordinators. In this regard, as noted above, although Garcia is primarily responsible for inputting data, she is now being helped by one of the coordinators, and another coordinator is scheduled to be trained to help her. Also, both Garcia and the coordinators share in providing information and referrals to members of the public who visit or call the prevention offices. Garcia and some of the coordinators are also assigned to take minutes at coalition meetings, and, on occasion, Garcia has been required to attend various off-site functions organized by the coordinators. In the King City office, the two coordinators perform the administrative work that Garcia does for the Salinas office, with the exception of the data input, which is

all done by Garcia at the Salinas office. Also, all prevention department employees use desktop computers in the performance of their duties.

The principle difference between the skills and job functions of Garcia and the coordinators is that Garcia has not been trained to and does not give presentations or conduct trainings on behalf of the prevention department. Although the Employer argues that this difference is crucial and forms the basis of a separate community of interest for the administrative assistant position precluding Garcia's inclusion in the same unit with the coordinators, I find that this difference, when weighed against the other relevant factors, is not sufficient to exclude Garcia from the petitioned-for unit. Indeed, the Employer has offered to provide Garcia the ten-week life skills training which would begin to prepare her to conduct trainings on the subject, and the Employer has indicated that Garcia could be promoted to a coordinator position upon obtaining the necessary skills and experience. In any event, the fact that two or more groups of employees engage in different functions or processes does not by itself render a combined unit inappropriate if, as here, there is otherwise a sufficient community of interest among such employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963).

In finding the inclusion of Garcia to be appropriate, I am guided by *Catholic Social Services*, 225 NLRB 288 (1976), where the Board, in similar circumstances, found it appropriate to include clerical employees in a unit with nonprofessional community counselors because the clerical employees had a direct work relationship with the counselors, shared the same supervision, payroll, working conditions, and fringe benefits; and maintained continuing contact with the counselors even though the skills and duties of the two classifications were different. The Board analogized the functions of the

clericals in that case to those of plant clericals or hospital clericals, as opposed to business office clericals, with the Board noting that the work efforts of the entire staff of clericals and counselors were jointly directed toward delivering the employer's counseling services. Likewise, here, Garcia is fully integrated into the mission and functions of the prevention department, working directly with and often alongside the coordinators. She also shares with them substantially similar working conditions, including the same supervision, pay range, and fringe benefits.

As a further consideration, I note that if Garcia were excluded, she might become the only unrepresented employee in the prevention department and, thus, effectively be denied the opportunity to be represented in collective bargaining, particularly given, as noted, that she appears to lack any significant community of interest with other employees of the Employer's employees. Thus, while the Employer contends that excluding Garcia would not subject her to "disenfranchisement" because there are other unrepresented clerical employees employed by the Employer in other departments, Garcia has minimum contact with those employees, who work at separate facilities under separate supervision. Moreover, those employees do not substitute for Garcia in performing her job duties, nor does Garcia substitute for them.

In sum, based on the foregoing I find that it is appropriate to include Garcia in the same unit as the prevention department coordinators.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time prevention department employees, including prevention department administrative assistants, employed by the Employer at its 5 Williams Road, Salinas and 200 Broadway, King City, California locations; excluding all managerial employees, office clerical employees, part-time temporary student employees and interns, guards, and supervisors as defined by the Act.

There are approximately 7 employees in the unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Teamsters Local 890, International Brotherhood of Teamsters**. The date, time, and place of the

election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with

them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **March 27, 2009**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website, www.nlr.gov,¹² by mail, by hand or courier delivery, or by facsimile transmission at

¹² To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

(510) 637-3315. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **April 3, 2009**. The request may be filed electronically through the Agency's web site, www.nlrb.gov,¹³ but may not be filed by facsimile.

Dated: March 20, 2009

/s/ Alan B. Reichard
Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

32-1349

¹³ To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.